



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

July 27, 2020

BY ECF

The Honorable Katherine Polk Failla
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2103
New York, New York 10007

MEMO ENDORSED

Re: *Petróleos de Venezuela, S.A., et al. v. MUFG Union Bank, N.A., et al.*,
No. 19 Civ. 10023 (KPF)

Dear Judge Failla:

We write respectfully on behalf of the United States of America (the “Government”) in response to the Court’s order requesting that the Government provide its views to the Court by August 5, 2020, on “the potential applicability of the act of state doctrine” in this matter, and “whether the applicability of the doctrine would be ‘consistent with the law and policy of the United States.’” Dkt. No. 144 (quoting *Allied Bank Int’l v. Banco Credito Agricola de Cartago*, 757 F.2d 516, 522 (2d Cir. 1985)).

Due to the need to consult with numerous agencies and components, the Government is unable to determine by August 5 whether it will file a statement of interest pursuant to 28 U.S.C. § 517, which ultimately must be approved by the Assistant Attorney General of the Justice Department’s Civil Division. Given the importance, complexity, and sensitivity of the issues involved, coupled with the multiple layers and iterations of review that must occur within the Department of Justice and other departments before any potential litigation position is finalized, the Government anticipates that it would need at least until September 16 to file any statement of interest.

The Government recognizes that the Court has scheduled oral argument on the parties’ cross-motions for summary judgment for August 12, but wishes to advise the Court of its constraints in making any submission in response to the Court’s order.

The Government understands that the parties have entered into a forbearance agreement to maintain the status quo at least “until sometime after your Honor is scheduled to hear argument on summary judgment motions.” Tr. of Hrg. on Feb. 6, 2020, Dkt. No. 66, at 18:22-24; *see also* Dkt. Nos. 70, 77. Moreover, the general license issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury currently does not permit transactions relating to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond until on or after October 20, 2020. *See* OFAC

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Venezuela-related General License No. 5D (July 15, 2020), *available at* https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_gl5d.pdf.

We thank the Court for its consideration of this matter.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York

By: s/ Anthony J. Sun
DAVID S. JONES
SAMUEL DOLINGER
ANTHONY J. SUN
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
T: (212) 637-2739 / 2677 / 2810
F: (212) 637-2786

cc: All counsel of record (by ECF)

The Court is in receipt of the Government's letter, in which it has informed the Court that it will be unable to file a Statement of Interest in this action by August 5, 2020. The Court knows that there have been several delays already in this action and that the parties are eager for a resolution. However, the Court does not believe that it would be fruitful to hold oral argument without knowing the Government's views, if any, on the application of the Act of State doctrine. Accordingly, the Court ORDERS that oral argument in this action be ADJOURNED to September 22, 2020, at 10:00 a.m. The Court further requests that the Government file its Statement of Interest, or inform the Court that it will not be filing any Statement, by September 16, 2020.

Dated: July 29, 2020
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE